

### Business Associate Addendum

The intent of this Addendum to the Underlying Agreement ("Agreement") between TRICARE Management Activity (hereinafter "TMA") and the National Quality Monitoring Contract (hereinafter "Contractor") is to modify the Agreement to address certain contractual requirements that are now or will become applicable to TMA pursuant to regulations issued pursuant to the Administrative Simplification Provisions of the Health Insurance Portability and Accountability Act of 1996, specifically provisions of 45 CFR § Parts 160 and 164, (hereinafter "HHS Privacy Regulation").

#### 1. Definitions

- (a) Capitalized terms used in this Addendum and in Attachment A but not defined herein shall have the meanings ascribed to them in the HHS Privacy Regulation.
- (b) "Underlying Agreement" means the Agreement executed between TMA and Contractor, to which this Addendum is attached.
- (c) "Privacy Compliance Date" means April 14, 2003.

#### 2. General

- (a) *Implementation.* Contractor acknowledges that it is a Business Associate of TMA for purposes of HHS Privacy Regulation, which was issued, in final form on December 28, 2000 (and may be amended from time to time). Contractor shall implement the HHS Privacy Regulation within the context of the DoD Health Information Privacy Regulation (DoD 6025.LL-R), the DoD Privacy Program (DoD 5400.11-R), the Privacy Act of 1974 (Public Law 93-579, 5 U.S.C. 552a), as amended, and other applicable laws and regulations.
- (b) *Compliance.* Accordingly, from and after the Privacy Compliance Date, Contractor shall comply with the provisions set forth in this Addendum and Attachment with respect to TMA's Protected Health Information. Should there be any modifications or revisions to the date which TMA must comply with the HHS Privacy Regulation, this Addendum is then still in effect. When effective, this Addendum will remain effective for the entire term of the Agreement, or until terminated.
- (c) *Uses and Disclosures of Protected Health Information by Contractor.* Except as otherwise limited in this Addendum, Contractor may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, TMA, as specified in the Agreement, provided that such use or disclosure would not violate the HHS Privacy Regulation, the DoD Health Information Privacy Regulation, the DoD Privacy Program, the Privacy Act of 1974, as amended, and other applicable laws and regulations.
- (d) *Failure to Comply with HIPAA Obligations.*

- (i) *Mitigation Obligation.* If, following the Privacy Compliance Date, Contractor has violated any of its obligations under this Addendum, at its sole cost and expense, Contractor immediately shall take all steps necessary to mitigate the harmful effects of such violation, if any.
  - (ii) *Opportunity to Cure/Termination.* If, following the Privacy Compliance Date, Contractor notifies TMA, or TMA otherwise has reason to believe, that Contractor has violated a material term of any of the requirements set forth in this Addendum, TMA may request a plan for addressing TMA's concerns and, if necessary, the parties thereafter shall engage in good faith discussions in an effort to reach agreement on the terms of the corrective plan. If Contractor materially fails to implement the terms of the mutually agreed corrective plan, then, in addition to any other rights and remedies that may be available to TMA, TMA has the right to terminate Agreement.
- (e) *State Law Requirement.* Generally, State Laws pertaining to health care are not applicable to health care programs and activities of TMA. However, there are circumstances when TMA procedures require the Contractor to follow State Law as described in the DoD Health Information Privacy Regulation, Chapter 2.
- (f) *HIPAA Audit Rights.* Upon TMA's request, Contractor shall make available to TMA its internal practices, books, and records relating to the Use and Disclosure of Protected Health Information received from, or created or received by TMA on behalf of, TMA in order to permit TMA to confirm and/or investigate Contractor's compliance with its HIPAA-related obligations (including any obligations under applicable state laws and regulations) hereunder. Contractor shall cooperate with TMA in all reasonable respects in connection with such audits.
- (g) *Special Notice Provision.* Any notices required or permitted to be delivered to TMA under this Addendum (including Attachment) shall be delivered to the TMA Privacy Officer pursuant to the notice requirements set forth in the section(s) of the Agreement related to notice, and shall be in addition to the notice requirements set forth in the Agreement.
- (h) *Effect of Amendment.* If there are any conflicts between the terms of the Agreement and the terms of this Addendum, the terms of the Addendum shall control. All non-conflicting terms of the Agreement shall survive and continue in full force and effect.
- (i) *Miscellaneous.*

- (i) *Regulatory References.* A reference in this Agreement to a section in the HHS Privacy Regulation means the section as in effect or as amended.
- (ii) *Records Management.* Contractor shall follow applicable records management protocol as described in the Agreement, Section C.
- (iii) *Access/Complaints.* Contractor shall promptly notify the TMA Privacy Officer of requests for access to TMA's Protected Health Information. Contractor shall promptly notify the TMA Privacy Officer of any HIPAA -related complaints received by the Contractor regarding TMA's Protected Health Information.
- (iv) *Privacy Official.* Contractor shall provide the TMA Contracting Officer with the name, location and telephone number of the Contractor's designated representative(s) for the implementation of the HHS Privacy Regulation and DoD Privacy Regulations.
- (v) *Workforce Training.* Individuals in the Contractor's Workforce (including agents, representatives and contractors), who will have access to TMA's Protected Health Information after the Privacy Compliance Date will have: (a) been provided with general HIPAA-related training and education; and (b) specific knowledge of Contractor's HIPAA-related responsibilities and contractual requirements to TMA (including applicable state laws and DoD regulations), in each case prior to being allowed to have access to TMA's Protected Health Information. At TMA's request, Contractor will provide TMA with all information reasonably requested by TMA regarding the training provided to the Contractor's Workforce (including agents, representatives and contractors) who will have or have had access to TMA's Protected Health Information. Contractor shall impose appropriate sanctions on any Workforce individual (including agents, representatives and contractors) who violates any of Contractor's HIPAA-related obligations under this Addendum, and agrees, at TMA's request, to prevent any such Workforce individual (including agents, representatives and contractors) from having any further access to TMA's Protected Health Information.

**ATTACHMENT A****CONTRACTOR REQUIREMENTS UNDER HHS PRIVACY REGULATION**

1. Contractor shall not Use or further Disclose Protected Health Information except as permitted or required by the Agreement (including this Addendum) or as Required By Law.
2. Contractor shall use appropriate safeguards to prevent the Use or Disclosure of Protected Health Information other than as provided in the Agreement (including this Addendum).
3. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of this Addendum.
4. Contractor shall report to TMA any Use or Disclosure of Protected Health Information not permitted under terms of the Agreement (including this Addendum) of which it becomes aware.
5. Contractor agrees to ensure that any agent, including subcontractor(s), to whom Contractor provides Protected Health Information received from, or created or received by Contractor on behalf of TMA, agrees to the same restrictions and conditions that apply to Contractor with respect to such Protected Health Information.
6. Contractor shall make available Protected Health Information to individuals in accordance with Section 164.524 of the HHS Privacy Regulation and the DoD Health Information Privacy Regulation, Chapter 11.
7. Contractor shall make available Protected Health Information for amendment and incorporate any amendments to Protected Health Information in accordance with Section 164.526 of the HHS Privacy Regulation and the DoD Health Information Privacy Regulation, Chapter 12.
8. Contractor agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by the Contractor on behalf of TMA, to the Secretary for purposes of the Secretary determining TMA's compliance with the HHS Privacy Regulation.
9. Contractor shall make available the information required to provide an accounting of disclosures in accordance with Section 164.528 of the HHS Privacy Regulation and the DoD Health Information Privacy Regulation, Chapter 13.
10. Contractor shall use authorizations conforming to the core elements identified in the HHS Privacy Regulation at §164.508(c), as necessary. The Contractor shall obtain a signed authorization for any use and disclosure consistent with the DoD Health Information Privacy Regulation, Chapter 5, and the HHS Privacy Regulation, §164.508(a). If the Contractor requires the Psychotherapy Notes, as defined in the DoD Health Information Privacy Regulation, of an individual, the Contractor shall obtain a signed authorization from that Individual subject to the exceptions listed in the HHS Privacy

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Regulation §164.508(a). Under the HHS Privacy Regulation the Contractor shall not release the Psychotherapy Notes to the Individual who is the subject of the notes. However, under the Privacy Act of 1974 case law, the Individual may have access to all of their health information, including their psychotherapy notes. Due to such complexities, the Contractor shall refer all determinations for release of Psychotherapy Notes to the TMA Office of General Counsel.